

## **REMARKS**

### **I. INTRODUCTION**

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

### **II. STATUS OF THE CLAIMS**

Claims 1-4, 6-8, and 10 are pending; Claims 1 and 10 are amended; Claim 5 is cancelled; and no claims are newly added herewith. As support for the amendments to Claim 1 may be found in cancelled Claims 5 and 9, it is respectfully submitted that no new matter is added by this amendment.

### **III. SUMMARY OF THE OFFICE ACTION**

In the outstanding Office Action, Claims 1-7 were rejected under 35 U.S.C. § 103 as unpatentable over *Gebhard* (U.S. Patent No. 5,186,563). Claims 1-7 and 10 were rejected under 35 U.S.C. § 103 as unpatentable over *Lorber* (U.S. Patent No. 3,357,395). Claim 8 was allowed.

### **IV. ARGUMENT**

#### **A. Allowable Subject Matter**

Applicant acknowledges with appreciation the indication that Claim 8 contains allowable subject matter. Because Claim 8 has not been amended herewith, it is respectfully submitted that Claim 8 remains in condition for allowance.

**B. Rejections Under 35 U.S.C. § 103**

***1. The Rejection Over Gebhard***

Claims 1-7 stand rejected under 35 U.S.C. § 103 over *Gebhard*. For the reasons discussed below, this rejection is respectfully traversed. Claim 1 has been amended to incorporate the features of cancelled Claim 5 and also to recite that the fluid dispenser is “for compression in the hand ... such that the bellows return to substantially its original size once hand pressure is released.” The basis for these amendments can be found in cancelled Claim 5 and page 3, paragraph 2 of the specification as filed.

Claim 1 recites, in part:

A fluid dispenser for compression in the hand, which is extruded from a low density polyethylene material and moulded under pressure to form a body comprising a bellows closed at one end ... the bellows comprising a plurality of vertically spaced ring-shaped outer fold-lines, a plurality of vertically spaced inner ring-shaped fold-lines of smaller diameter than that of the outer fold-lines and each positioned at a height generally midway between each pair of outer fold-lines, and annular webs extending between neighbouring inner and outer fold-lines ...

such that the bellows returns to substantially its original size once hand pressure is released, and

wherein a ratio of thicknesses of the inner and outer fold-lines falls within the range of 1.5:1 and 2.5:1.

As described in the specification at page 3, lines 4-10:

Applicant has established that by ensuring that the thickness of the outer fold-lines is less than that of the inner fold-lines, the bellows is enabled to collapse more readily when subjected to hand pressure. Also, the increased thickness of the inner fold-lines provides for the bellows the required resilience which enables it to return close to its original size once hand pressure is released. This feature ensures that the reservoir is retained in a useful and usable form.

*Gebhard* relates to a fluid dispenser with applicator member. Once again, the Office Action concedes that *Gebhard* does not disclose the features of Claim 1. Nonetheless, the Office

Action asserts that the claimed features are an obvious matter of design choice. Office Action, pages 2-3.

As explained in MPEP § 2143.03, all of the claimed features must be present in the applied reference or references to provide a *prima facie* case of obviousness. Since the outstanding Office Action admits that several of the features recited in independent Claim 1 are not found in the applied reference, it appears that the outstanding Office Action is rejecting Claims 1-4, 6, and 7 based upon the impermissible “obvious to try rationale.”

As set forth in MPEP § 2145, a rejection based on the “obvious to try rationale” is improper where “what would have been ‘obvious to try’ would have been to vary all parameters or to try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.”

In this case, there is no evidence that *Gebhard* or any other reference would provide the requisite direction to the inventors to develop the claimed invention. Certainly, the outstanding Office Action has not cited to any teachings in *Gebhard* to provide such motivation. Without such support in *Gebhard*, it is respectfully submitted that the outstanding Office Action has failed to provide a *prima facie* case of obviousness.

Moreover, in contrast to the present invention, *Gebhard* discloses a collapsible container that is “bellows or accordion shaped.” *See, e.g., Gebhard*, col. 3, line 55. This collapsible container does not act as a bellows because, although it progressively decreases in size to discharge liquid, it does not return substantially to its original size once hand pressure is released. In fact, *Gebhard* teaches away from the present invention because it describes a device

that is only operable in a single direction of compression (toward the applicator member). The *Gebhard* device collapses under pressure and is configured to void the container of its contents. *See, e.g., Gebhard*, col. 2, lines 6-7.

Thus, one of ordinary skill in the art would have no motivation to modify the *Gebhard* device to arrive at the present invention wherein the ratio thickness of the webs, the height of the dispenser and the weight of the dispenser are such that the bellows return substantially to its original size once hand pressure is released. By returning to its original size the bellows (without the need for further mechanical means to assist expansion) of the claimed invention is suitable for use with fluids of differing viscosity and offers consistent and efficient dispensing of the fluid.

Simply put, there is nothing in *Gebhard* that would motivate one of ordinary skill in the art to modify *Gebhard* in the manner proposed by the outstanding Office Action. Certainly, the Office Action does not cite to any teachings in any reference to support the allegation of obviousness.

Accordingly, as the outstanding Office Action has not provided a *prima facie* case of obviousness for any of Claims 1-4, 6, or 7, it is respectfully requested that this rejection be withdrawn.

## **2.     *The Rejection Over Lorber***

Claims 1-7 and 10 stand rejected under 35 U.S.C. § 103 as unpatentable over *Lorber*. For the reasons discussed below, this rejection is respectfully traversed.

*Lorber* relates to a moistening pad. In contrast to the claimed invention, *Lorber* does not disclose a fluid dispenser that can be compressed by hand. Rather, the *Lorber* device is operated

by standing it on a flat surface and pushing down on the cover. Thus, *Lorber* does not disclose or suggest “A fluid dispenser for compression in the hand,” as recited in Claim 1.

In more detail, *Lorber* does not disclose a fluid dispenser that can be compressed in the hand, wherein the bellows of the device return substantially to their original size once hand pressure is released. There is no suggestion that the *Lorber* device can be hand held, because the device is operated by pushing downwards so that water is forced upwards through a riser tube. If the *Lorber* device were not held with the “riser tube” in an upright position, compression of the device would not expel water. To hold the device in such a position would not be possible using one hand. There is no indication in *Lorber* that the device could be modified for hand held use to allow fluid to be dispensed when the device is in any orientation. In fact, *Lorber*’s device will not work effectively when it is not in an upright position because the water content would flow away from the inlet end of the tube and the device would simply pump air. Furthermore, if the *Lorber* device were used in a non-upright position, compression would likely cause the riser tube to flex and block the inlet of water to the tube.

*Lorber* is concerned with moistening surfaces such as stamps, whereas the present invention is concerned with dispensing skin care products. The present invention allows a user to dispense such products on to the skin at a variety of angles, which would not be possible with the *Lorber* device. There is no suggestion in *Lorber* that would inevitably lead a skilled person to the specific claimed features having the unique combination of properties claimed without taking an inventive step. As a result, it is respectfully submitted that *Lorber* does not disclose or suggest the features of Claim 1, from which Claims 2-4, 6, 7, and 10 depend.

Moreover, as explained in MPEP § 2143.03, all of the claimed features must be present in the applied reference or references to provide a *prima facie* case of obviousness. Since the outstanding Office Action admits that several of the features recited in independent Claim 1 are not found in the applied reference, it appears that the outstanding Office Action is rejecting Claims 1-4, 6, and 7, and 10 based upon the impermissible “obvious to try rationale.”

As set forth in MPEP § 2145, a rejection based on the “obvious to try rationale” is improper where “what would have been ‘obvious to try’ would have been to vary all parameters or to try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.”

In this case, there is no indication in *Lorber* as to what parameters would be critical or likely to be successful. Accordingly, it is respectfully submitted that the outstanding Office Action has violated the requirements set forth in MPEP § 2143.03 and MPEP § 2145. It is therefore respectfully requested that this rejection be withdrawn.

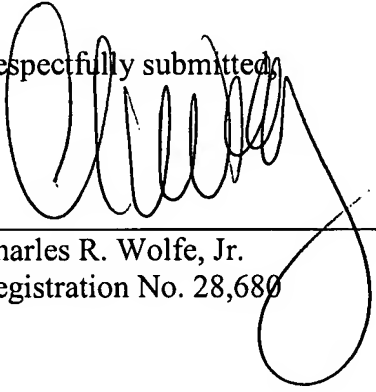
Furthermore, if the skilled person were dissatisfied with the invention of the *Gebhard* the description of *Lorber* would not provide additional teaching to lead one of ordinary skill in the art to the solution of the present invention. Thus, Claim 1 (and its dependent claims) are novel and non-obvious over both *Gebhard* and *Lorber*.

**V. CONCLUSION**

Consequently, in view of the present amendments and foregoing discussion, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

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Respectfully submitted,



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